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February 4, 2003

VIA ELECTRONIC FILING

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: Notice of Ex Parte Presentation
In the Matter of Review of Section 251 Unbundling Obligations of Incumbent
Local Exchange Carriers and Implementation of the Local Competition Provisions
in the Local Telecommunications Act of 1996, CC Docket Nos. 01-338; 96-98;
98-147

In the Matter of Appropriate Framework for Broadband Access to the Internet
Over Wireline Facilities, CC Docket Nos. 02-33; 95-20; 98-10

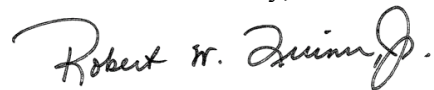
Dear Ms. Salas,

On Monday February 3, 2003, I spoke on the telephone to Dan Gonzalez, Commissioner Martin's Senior Legal Adviser, four times to discuss issues related to the aforementioned proceedings. During the course of those discussions, I explained AT&T's position on the necessity of requiring the unbundling of switching until the significant economic impairments that AT&T has identified in the record of the Triennial Review are addressed and eliminated. The process of identifying those impairments and whether they have been removed can only be conducted on a market-by-market basis and cannot be determined in a national proceeding. Rather, state commissions must be left with the authority to conduct that granular analysis based upon local facts and conditions. If the Commission here adopts presumptions with respect to any network element, the states must be permitted, based on evidence adduced in a state proceeding, to issue contrary findings and determine a state-specific list of UNEs without having to resort back to the Commission for authority.

In any event, I stated that the Commission here should find that the record requires on a nationwide basis that carriers are impaired without access to all UNEs previously identified without limitations such as the ones that exist in the switching and combination areas. I also stated that pricing of those UNEs should continue to be done by the states. In addition, I underscored the importance of preserving CLEC access to ILEC loop facilities, and identified operational and cost barriers to competition that would result if CLECs were relegated to copper facilities as ILECs introduce additional fiber into existing loop plant. Specifically, we discussed the possibility of service disruption if the ILECs were permitted to “migrate” CLEC voice or data customers from fiber to copper facilities at their discretion. I also provided the attached two documents to Mr. Gonzalez via email.

The positions expressed in the meeting for each of these areas were consistent with those contained in the Comments, Reply Comments and ex parte filings previously made in the aforementioned dockets. One electronic copy of this Notice is being submitted for each of the referenced proceedings in accordance with the Commission’s rules.

Sincerely,

A handwritten signature in black ink, reading "Robert W. Quinn". The signature is written in a cursive style with a large, stylized "Q" and a long, sweeping underline.

cc: Dan Gonzalez

For Immediate Release

February 3, 2003

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ITAA Says "New Rules for New Wires Approach" Requires "Immaculate Connection"

Association Say Only Last Mile Competition

Will Lead to Internet Investment, Innovation

Arlington, VA--The Information Technology Association of America (ITAA) today called on the Federal Communications Commission to help the high tech sector jumpstart the nation's economy by preserving competition in last mile voice and data markets. ITAA said the real interests of the IT industry go far beyond the short-term desire for new equipment orders. Rather than killing competition to placate a handful of monopoly telephone companies, ITAA urged the FCC to protect the Internet's future economic vibrancy by continuing the principle of "network nondiscrimination" and consumer access to competitive telecommunications alternatives.

"We want to unequivocally repeat our view that unbundling is essential - regardless of technology, whether for copper or fiber or some mix of the two -if we are going to see growth, innovation and investment in this sector," said ITAA President Harris N. Miller in a letter to FCC Chairman Michael K. Powell. "The FCC, in order to ensure an eventual return to prosperity in the technology and telecom sectors, must stay the course on unbundling obligations -- ensuring competitive access to all facilities in the local loop and allowing states to maintain the power to set wholesale pricing rates based on local market factors. It's the only proven path to true competition."

ITAA made its comments as the FCC completes its Triennial Review NPRM proceeding and rulemaking on unbundled network elements. Miller said regulatory changes now contemplated, combined with resultant litigation, will cause marketplace uncertainty and forestall future investment. He said only unambiguous support for unbundling will allow true competition to take hold.

The ITAA executive also dismissed arguments about "new rules" for "new wires." Saying that such notions depend on faith in an "immaculate connection," Miller said attempts to separate new broadband investment from incumbent monopoly power will require evermore oversight and regulation.

"There is no basis in the market for a distinction between copper and fiber facilities," Miller said, noting that, "When the local loop remains in the hands of the one monopoly provider, there is no incentive for new innovations, new investments, new competition or new services."

Miller noted that ITAA and its predecessor organization ADAPSO, have actively participated for thirty years in Commission proceedings on behalf of the computer and high technology industry, including all aspects of the *Computer Inquiries*. "The interests of our member companies are far broader than a desire for new equipment orders, they extend to furthering the successful regulatory framework that made the success of the Internet possible."

The [letter <http://www.itaa.org/isec/docs/fcc203.pdf>](http://www.itaa.org/isec/docs/fcc203.pdf) is available on the ITAA website.

The Information Technology Association of America (ITAA) provides global public policy, business networking, and national leadership to promote the continued rapid growth of the IT industry. ITAA consists of over 400 corporate members throughout the U.S., and a global network of 49 countries' IT associations. The Association plays the leading role in issues of IT industry concern including information security, taxes and finance policy, digital intellectual property protection, telecommunications competition, workforce and education, immigration, online privacy and consumer protection, government IT procurement, human resources and e-commerce policy. ITAA members range from the smallest IT start-ups to industry leaders in the Internet, software, IT services, ASP, digital content, systems integration, telecommunications, and enterprise solution fields. For more information visit www.itaa.org.

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FCC Phone Rule Proposals Criticized

Conservative leaders and others say the ideas could raise rates and hamper competition.

By James S. Granelli
Times Staff Writer

February 3 2003

Conservative leaders, joining Democrats and a host of disparate groups, will urge the Federal Communications Commission today to pull back on proposals that would dramatically change telephone competition rules.

They are expected to say in letters filed with the agency that ideas the five commissioners are considering to reform the telecom industry would lead to higher rates and effectively prevent states from setting local rules for phone and high-speed fiber-optic service.

In one letter, conservative legal scholar Bruce Fein, a former FCC general counsel, contends that the proposed restructuring under review by the commission could run afoul of the Constitution by setting up a regulatory framework that Congress already has rejected.

"For an unelected commission to trump the policy wisdom of elected and accountable representatives of the people in the Congress wrenches separation of powers principles and epitomizes agency arrogance," Fein wrote in his letter, a copy of which was obtained Sunday by The Times.

Fein adds his voice to a growing chorus of individuals and groups across the political spectrum opposing significant changes to the rules governing competition in the telecommunications industry.

What's more, never have so many varying groups allied themselves against an agency's efforts, even as the agency tries to forge a compromise, said commentator James Glassman, a fellow at the conservative American Enterprise Institute in Washington.

Last month, 15 Democrats and five Republicans signed a letter that criticized FCC Chairman Michael K. Powell's position that the industry has enough competition to justify an end to regulated rates and much of the authority of state public utility commissions.

The FCC members, in their first review of competition rules under the Telecommunications Act of 1996, have been struggling to come up with a framework that passes court muster.

Major aspects of their previous efforts have been overturned in court, and the commission faces a largely self-imposed Feb. 20 deadline to come up with a solution.

With a deadline for public comments set for Thursday, others are quickly adding their opinions to the debate.

The American Conservative Union, for example, also is expected to file a letter today urging Powell to let the states continue regulating rates under a controversial rule that permits competitors to lease lines and equipment from the nation's four Baby Bell companies at deeply discounted prices.

"The states are best suited to implement the competitive promise and congressional intent of the Telecommunications Act," the letter states.

Like most conservatives, the group sees the issue as an unnecessary infringement on states' rights, as well as a hammer on local competition, which is only starting to take hold.

The Information Technology Assn. of America, representing 450 high-tech companies, also will file a letter today arguing that the discounted prices are essential to maintain "if we are going to see growth, innovation and investment in this sector."

In addition, the National Assn. of Regulatory Utility Commissioners, representing state regulators, is expected to add comments later this week. "The entire telecom world is buzzing daily, almost hourly," association President David A. Svanda said.

The group has argued that state regulators know better than federal agents the status of competition in their states and are better able to set rates that comply with court rulings.

SBC Communications Inc., California's dominant local phone service provider, and the other Bell companies, along with their larger suppliers, have been lobbying the FCC to remove rules requiring them to lease their equipment at what they contend is below cost.

About 10 days ago, Powell circulated a proposed order among commissioners that strongly endorsed the Bells' position, but he has failed to gain enough support among his colleagues and is trying to find some middle ground.

He and other commissioners agree that competition is best fostered by companies that use their own facilities to provide service. Leasing access at cheap prices, they say, will discourage competitors from building their own facilities and the Bells from investing in new equipment.

But where that line should be drawn, and when, has been a thorny issue. Industry sources close to the arguments said the middle ground is fluid but seems to be more in line with

Commissioner Kevin J. Martin's view that states should continue with their rate-setting and other roles.

Consumers, state regulators, Internet service providers, Bell competitors and other businesses are worried that the commission may adopt a plan that splits the rate-setting authority along one of two lines, either of which could stifle competition.

In one scenario, states would have authority over existing copper and high-speed lines, requiring the Bell companies to lease those to competitors at low rates. But the Bells would be able to keep their new high-speed fiber-optic lines off the regulated list and to themselves.

In another scenario, the dividing line would be set according to how many access lines competitors have at any one central switching station. Above a certain level, competitors would have to have lines physically transferred to their own switches. Critics argue that such transfers would damage the quality of the line.

Those ideas were encompassed in a bill proposed by Reps. W.J. "Billy" Tauzin (R-La.) and John D. Dingell (D-Mich.) several years ago. Though the measure passed the House last February, it died in the Senate.

Fein argues in his letter to the FCC that Congress didn't intend its policy debates over legislation to be a "mere dress rehearsal for a final performance before the commission it created."

He and other conservatives also worry that the ideas the FCC is considering run counter to President Bush's campaign promises and, more important, could hurt him in the next election if consumers are hit with much higher telephone rates.

"If Powell is successful, there's no doubt that one effect will be rising telecom prices for consumers, and that would hurt the administration," Glassman said.

Glassman and others say the White House has remained quiet on the issue and has not sought to influence the process.

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